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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,042	07/18/2002	Jorg Peter Schur	von Kreisler.022	9726

110 7590 12/19/2006
DANN, DORFMAN, HERRELL & SKILLMAN
1601 MARKET STREET
SUITE 2400
PHILADELPHIA, PA 19103-2307

EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1615

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/19/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/070,042	Applicant(s) SCHUR, JORG PETER	
	Examiner NEIL LEVY	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-10, 12, 13, 19-21, 24, 30, 36, 43, 46 and 48 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

- 5) ☒ Claim(s) 12 and 24 is/are allowed.

- 6) ☒ Claim(s) 1-4, 6-10, 13, 19-21, 30, 36, 43, 46 and 48 is/are rejected.

- 7) ☐ Claim(s) _____ is/are objected to.

- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

Claim 1-4, 6-10, 13, 19-21, 30, 36, 43, 46, 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over BLUM 6207290 in view of RODRIGUEZ 536520 and KUWAZURA 5665432

Blum, of record, applies reduced toxicity compositions in wood treating methods, showing benzyl alcohol, propylene glycol, isopropyl alcohol as solvents (col. 2, lines 63-65; col. 3, lines 30-35). Tannin, Tannic acids and essential oils, menthyl anthranilate, menthyl salicylate for example, are also encompassed, at 0.01-10% (col. 4, lines 30-65).

However, Blum intends to protect against insects/ termites, algae, marine borers, in addition to bacteria and fungi (col. 5, lines 10-20) but with the instant application methods - impregnation or spraying (col. 5: lines 21-27). Blum's less toxic components are inclusive of those compounds.

RODRIGUEZ uses isopropanol propyl alcohol, tanning and tannic acid to treat wood (column 3, top, lines 56-59) including (9) plural treating agents, by spraying, alcohols are 13-16%; tanning and tannic acid 3 ¾% (column 9, lines 10-22). No mention of benzyl alcohol. BLUM provides wood (column 5, lines 20-26) spray or impregnation treatment of benzyl alcohol solvent (column 2, bottom) and organic arsenicals of reduced toxicity (column 3, lines 5-18), with other essential oils (column 4, lines 29-41). Also envisioned is tannic acid, thus compatible with RODRIGUEZ wood treatment. Multiple solvents are seen (Example 1)-included are propylene glycol isopropanol

KUWAZURA also utilizes glycerol propylene glycol, propanol (column 2, bottom) to treat wood, and again show equivalence of alcohols - ethanol, propanols, glycerol and propylene glycol, among others (col. 2, bottom).

However, Kuwazura was not particularly concerned with non-target species toxicity.

All references address wood spray and impregnation treatment, and utilize glycols and/or alcohol solvents. However, BLUM shows one would be motivated to use non-toxic compositions. The use of benzyl alcohol of BLUM with compatible ingredients of secondary references to provide non-toxic compositions of the alcohols, plant extracts and glycols as are instantly claimed. No unobvious or unexpected effects have been shown by applicant to be attributable to the particular compositions of benzyl alcohol with glycols, alcohols, lactic acid or tannin compounds instantly claimed.

One having ordinary skill in the art would be motivated to perform this modification in order to reduce toxicity to operator.

Thus, the artisan would find it obvious to prepare particular ingredient combinations, sizes, concentration and ratios of ingredients, depending upon the target species, desired number of applications, length of time for desired protection.

It has not clearly been established by objective showing of some additional unusual and/or unexpected results that the administration of the particular form of active, carrier of the particular form of structure to be treated, provides any greater level of prior art expectation as claimed. Further, applicant has showed no criticality as to the concentration or agent.

The selection of each ingredient and form thereof is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredient to optimize the effects desired, and the use ingredients for the functionality for which they are known to be used is not a basis for patentability.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made, desiring to utilize wood compositions, to use one of those known in the art, as exemplified by the primary reference, with selection of the equivalent agents of any of the referenced compounds, at concentrations effective to kill microbes but not the operator.

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Applicant's arguments filed 10/06/06 have been fully considered but they are not persuasive. Applicant's arguments are to the effect ...Thirumlacher teaches away, as instant "consists essentially" and is non-toxic; and prior art provides more (BLUM) than the instant components, or less (KUWAZURA). The instant language is open, the components of the prior art providing treatment of wood, with multiple non-interfering compounds..

Claims 12 & 24 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



NEIL LEVY
Primary Examiner
Art Unit 1615
